

Appendix D

FUDS Charter

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
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JUN 29 1994

29 Jun 94
~~MEMORANDUM THRU DIRECTOR OF THE ARMY STAFF~~ *MICHAEL B. WILSON, LTC, GS, ADAS*
ASSISTANT CHIEF OF STAFF FOR
INSTALLATION MANAGEMENT
FOR DIRECTOR OF ENVIRONMENTAL PROGRAMS (DAIM-ED) *July 21*
SUBJECT: Formerly Used Defense Sites (FUDS) Program *Carla*
Charter

After coordination with the Office of the Deputy Under Secretary of Defense (Environmental Security), the Department of the Army, the Department of the Navy, the Department of the Air Force, and the Defense Logistics Agency, the FUDS Program Charter is hereby approved and transmitted for your immediate implementation.

The point of contact in this office is Mr. Rick Newsome at extension (703) 614-9531.

Lewis D. Walker
Lewis D. Walker
Deputy Assistant Secretary of the Army
(Environment, Safety and Occupational Health)
OASA(I, L&E)

Attachment

FORMERLY USED DEFENSE SITES (FUDS) PROGRAM CHARTER

1. References.

a. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sec 9601-9675.

b. Defense Environmental Restoration Program, 10 U.S.C. Sec 2701-2707.

c. Executive Order 12580--Superfund implementation, January 23, 1987.

d. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec 6901-6992.

e. Fiscal Year 1994/1995/1996 Defense Environmental Restoration Program (DERP) Management Guidance and subsequent editions.

f. Department of the Army General Orders 24.

g. Army Regulation 27-40, Litigation, December 1985.

2. **Purpose.** In accordance with the provisions of Reference 1.e., the Department of the Army (DA) serves as the Department of Defense (DoD) Executive Agent for execution of the Defense Environmental Restoration Program - Formerly Used Defense Sites (DERP-FUDS) Program. This Charter assigns responsibilities within the Army and provides general policy guidance regarding the implementation of this executive agency.

3. **Program Principles.** In managing and executing the DERP-FUDS program, the Army will comply with the policies and principles articulated in the DERP Management Guidance, as amended.

4. **Definitions.**

a. Formerly Used Defense Site: A Formerly Used Defense Site is real property that was formerly owned by, leased by, possessed by, or otherwise under the operational control of the Secretary of Defense or the military components that predate the Department of Defense (hereinafter referred to collectively as "DoD"). Accordingly, DERP-FUDS include: all sites for which real property accountability previously rested with DoD irrespective of current ownership or current responsibility for accountability within the Federal government; all sites previously used by DoD components under lease or other agreements; and all sites previously occupied by DoD components over which significant control was exercised without the benefit of a formal real estate instrument or other agreements. FUDS may also include manufacturing facilities which were owned by DoD Components and real property accountability rested with DoD but were operated by contractors, as well as National Guard and Reserve facilities where property accountability at one time rested with DoD. A determination that a facility fits within the

definition of DERP-FUDS does not constitute an admission of DoD cleanup liability for that site. Eligibility of a DERP property is determined upon completion of an Inventory Project Report in accordance with the DERP-FUDS manual or as described in the DoD DERP Management Guidance.

b. A third party site (TPS) is a site where the DoD has no current or past ownership interest and where the DoD has a responsibility as a potentially responsible party for cleanup of the site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The Office of the Chief Counsel, U.S. Army Corps of Engineers, (USACE) will conduct direct liaison with the Department of Justice and represent DA in litigation involving the cleanup of TPS contaminated by DERP-FUDS. In accordance with the provisions of Reference 1.e., the DoD Components will perform these functions for TPS associated with contamination resulting from their activities. Defense Environmental Restoration Account funds are not available to pay judgments or final settlements in TPS cases.

5. Program Scope.

a. The applicability, scope and program priorities the DERP-FUDS shall be consistent with the definitions in Reference 1.e.

b. Environmental and/or safety issues to be addressed by the DERP-FUDS program, under the authorities cited in Section 1 include: (1) contamination from hazardous substances, pollutants, or contaminants; (2) other environmental threats, such as abandoned ordnance and explosive waste (including chemical or biological warfare materiel) or low-level radioactive waste; and (3) abandoned buildings, structures, or debris which were unsafe when released from DoD control.

c. Environmental restoration activities' under the DERP-FUDS program encompass, among other things, preliminary assessments; site inspections; time-critical removal activities,, non-time-critical removal activities (engineering evaluation and cost analysis, removal design, removal action) ; remedial activities (remedial investigation and feasibility study, remedial design, remedial action, operation and maintenance); and, litigation, negotiation, and settlement with regulatory agencies and/or other potentially responsible parties (PRPs) relative to defining and resolving DoD liability for DERP-FUDS.

6. Responsibilities.

a. The Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)):

1) is responsible for overall policy for the DERP including DERP-FUDS;

2) has overall responsibility for managing the Defense Environmental Restoration Account (DERA), including providing DERP-FUDS Program funds to the Army and developing/defending the budget;

3) conducts periodic reviews of DERP-FUDS program performance; and

4) directs changes as needed.

b. In accordance with the provisions of Reference 1.e., the Department of the Army acts as the Executive Agent for and on behalf of DoD in meeting all applicable environmental restoration requirements at DERP-FUDS regardless of which DoD component previously owned or used the site.

c. The Deputy Assistant Secretary of the Army for Environment, Safety and Occupational Health (DASA(ESOH)) under the direction of the Assistant Secretary of the Army for Installations, Logistics, and Environment (ASA(IL&E)) supplements DoD policy and exercises general oversight of the DERP-FUDS program including concurrence with the annual workplan and periodic reviews.

d. The Director of Environmental Programs (DEP) within the Office of the Assistant Chief of Staff for Installation Management (ACSIM) is the Army Staff proponent for the DERP-FUDS program. As such, the DEP is responsible for promulgation of overall DERP-FUDS policy guidance, establishment of general DERP-FUDS program goals and objectives, and approval of the annual workplan and program prioritization.

e. The Chief of Engineers as Commander of U.S. Army Corps of Engineers (USACE) is responsible for DERP-FUDS program management and execution. Acting on behalf of the Chief of Engineers, the Directorate of Military Programs (CEMP) of Headquarters USACE accomplishes DERP-FUDS programming, develops program workplans, and approves project priorities for funding consideration. Within CEMP, the Chief of the Environmental Restoration Division (CEMP-R) is assigned execution responsibility of the DERP-FUDS program. As such, the Chief of the Environmental Restoration Division establishes DERP-FUDS management guidance and execution procedures within USACE. In accordance with E.O. 12580, Ref 1.c., as properly delegated, execution of the DERP-FUDS Program by USACE components will include:

1) management and execution of all environmental restoration program activities, including acting as the Federal Government's Contracting Officer. Development and dissemination of program implementation policy, management guidance, and execution procedures. Ensuring that program activities are in compliance with applicable legal requirements and consistent with DoD and Army environmental restoration policies;

2) determination and approval of the specific removal /remedial measures required for projects;

3) coordination of project management and execution activities with stakeholders, to include establishment and management of Restoration Advisory Boards, and other agencies, as appropriate;

4) negotiation and execution of all necessary real estate access agreements and other necessary legal documents and findings;

- 5) negotiation and execution, on behalf of DoD, of all necessary PRP liability agreements and related documents;
 - 6) providing legal representation for all litigation or administrative enforcement action regarding a DERP-FUDS site;
 - 7) allocation of funds to and acceptance of funds from other Federal or State agencies and other responsible parties as appropriate to manage and execute projects and in full or partial settlement of all reasonable and necessary claims under the CERCLA, as amended;
 - 8) utilization and oversight of DoD, Army, and/or other experts to conduct specialized DERP-FUDS activities such as research and development, risk assessment, removal of abandoned ordnance and explosive wastes (including chemical or biological warfare materiel), and/or detection and disposal of low-level radioactive wastes;
 - 9) adjustment and reallocation of funds among ongoing program and project activities as necessary to ensure efficient utilization of funds;
 - 10) negotiation and execution of all necessary hazardous waste manifests and related documents;
 - 11) ensuring all management guidance and execution procedures are consistent with applicable legal requirements, DoD and DA program guidance documents and policy statements. Accounting, financial reporting, and procurement procedures will be based on standard Army procedures used by USACE.
7. **Program Manual.** CEMP-R will develop, and update as necessary, a DERP-FUDS program manual which provides detailed guidance and procedures to facilitate management and execution of the overall program as well as prioritization of all eligible projects for timely execution subject to availability of funds.
8. **Tort Liability.** DERA funding generally is limited to support CERCLA based litigation and not available for legal support for toxic tort actions brought under the Federal Torts Claims Act. Consistent with Chapter 6, AR 27-40, Ref 1.g., responsibility for Army toxic tort legal representation connected with DERP-FUDS will be determined, on a case by case basis, by the Chief, Environmental Law Division, and the Chief Counsel, USACE. Responsibility for toxic tort litigation for the Air Force, Navy and the Defense Logistics Agency remain with those services. Since toxic tort litigation may be combined with actions for response costs under CERCLA, the Chief, Counsel, USACE will coordinate with appropriate service counsel regarding the use of DERA funding on such cases. Administrative claims under the Federal Torts Claims Act in toxic tort actions will continue to be processed in accordance with service claims regulations.
9. **Relationship of the DERP-FUDS Executive Agent to Other DoD Components.**

a. Environmental restoration actions necessary at DERP-FUDS which are adjacent to an active installation should be the responsibility of the Army, i.e., USACE. Prior to the USACE initiation of those environmental restoration activities, the DoD component controlling the active installation retains the right of first refusal to accept the restoration responsibility. If the DoD component does not exercise its right of first refusal, the USACE will proceed to execute DERP-FUDS responsibilities at the site. However, once accepted, the DoD component will execute all appropriate actions through long-term operations and maintenance as required.

b. Any DoD component that receives an inquiry, notice, or other communication from a non-DoD organization in regard to a particular DERP-FUDS will immediately refer the inquiry, notice, or other communication to the Army (USACE) .

c. The DERP-FUDS program will receive the same consideration for funding as any DoD components' installation restoration program.

10. **Exemptions.** Exemptions from this policy will be forwarded through channels to the DASA(ESOH) for appropriate action.